

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2870 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?
- 1 to 5 = No.

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RANABHAI SAVJIBHAI RAJPUR

Versus

STATE OF GUJARAT

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Appearance:

MR YS LAKHANI for Petitioner

Mrs. Ami Yagnik, APP, for Respondent No. 1

MR VIVEK BAROT for Respondent No. 2, 3, 4

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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 28/07/98

ORAL JUDGEMENT

Rule. Service of Rule is waived by learned counsel, Mr. Vivek Barot for respondents Nos. 2,3 and 4 and learned Additional Public Prosecutor, Mrs. Ami Yagnik, for respondent No.1. By the consent of the learned advocates for the parties, this Criminal Misc. Application is taken up for final hearing.

This application is filed under Section 439(2) of the Code of Criminal Procedure ('Code' for short) for cancellation of anticipatory bail granted in favour of the respondents Nos.2, 3 and 4, by the learned Additional Sessions Judge, Banaskantha, at Palanpur, by his order dated July 15,1998, rendered in Criminal Misc. Application No.520 of 1998.

First information report, being C.R. No.I-39/98, came to be lodged by the petitioner (original complainant) against five accused persons for the offences punishable under Sections 307, 324, 504, 147, 148, 149 of Indian Penal Code, Section 135 of the Bombay Police Act and Section 25(2) of the Arms Act in Vav Police Station on June 16, 1998 at about 12.30 hrs. As per the allegations made in the first information report, the complainant is a resident of village Khima Padar and is doing agricultural work. On the day of the incident, i.e., on June 16, 1998, the complainant and his elder brother, Nagjibhai, were cutting a neem tree, which had fallen down due to cyclone. It is further alleged that, when the complainant and his brother, Nagjibhai, along with the son of the complainant, Abbabhai, were returning from their agricultural field at 8 a.m., a jeep arrived there and respondent No.2, Rajput Dhanjibhai Sujaji, Ambabhai Sujaji, Dora Sujaji, Sujaji Becharji (respondent No.3), Tejaji Becharji (respondent No.4) got down from the said jeep, and came near the complainant, his son and his brother. They have started abusing them and have asked as to why they had cut the branches of neem tree. Saying so, Ambabhai Sujaji, who was armed with a dharia, has given a severe blow on the head of the son of the complainant, Abbabhai. When the complainant and his brother tried to intervene, respondent No.2, Dhanjibhai, who was carrying a gun, fired three rounds, which struck on the head and the back of the complainant. It is alleged that pellets of the bullet struck on the leg of the complainant. When the complainant, his brother and his son raised shouts, Vora Suja threw a stick on the complainant. Sujaji Becharji, who was armed with a wooden scissor, threw that scissor at the brother of the complainant. Thereafter, all the five persons, who had come in the jeep, flew away. The brother of the complainant, Nagjibhai, went to the village and brought a bullock-cart. Thereafter, one Shanker Sujaji brought a jeep car and in the jeep car the complainant and his son Abbabhai were taken to the hospital. In the hospital, the complainant lodged first information report against five accused persons.

On the basis of the first information report, the Investigating Agency started investigation. All the five accused persons have filed an application for anticipatory bail under Section 438 of the Code before the Sessions Court, Banaskantha, at Palanpur, which was registered as Misc. Criminal Application No.520 of 1998. The said application came to be transferred to the court of the learned Additional Sessions Judge, Banaskantha, at Palanpur. After issuance of notice to the Public Prosecutor, the learned Additional Sessions Judge granted anticipatory bail, by order dated July 15, 1998, in favour of respondents Nos. 2, 3 and 4.

The original complainant has filed this application for cancellation of anticipatory bail granted to respondents Nos, 2, 3 and 4 by the learned Additional Sessions Judge, Banaskantha, at Palanpur.

Mr. Y.S. Lakhani, learned counsel for the petitioner, has submitted that the complainant and his son sustained serious injuries and they were admitted in the hospital and they were not discharged on the day, when the order was passed by the learned Additional Sessions Judge, Banaskantha, at Palanpur. He further submitted that, in spite of this fact, the learned Additional Sessions Judge, Banaskantha, at Palanpur, has released respondents Nos, 2, 3 and 4 on anticipatory bail ignoring the settled principles of law that in serious offences, more particularly when the injured witnesses were in the hospital, no discretion should be exercised by the Sessions Court in enlarging respondents Nos. 2, 3 and 4 on anticipatory bail.

During the course of hearing, learned APP, Mrs. Ami Yagnik, produced police papers. From the police papers, it is evident that the injured witness was discharged from the hospital on July 11, 1998 and he was readmitted on July 13, 1998 for removal of pellets. From the injury certificate of the complainant, Ranabhai, dated June, 16, 1998, issued by the Medical Officer, Tharad Hospital, it appears that the complainant has sustained injuries due to fire arms and bullets and the number of injuries is seven in all. The son of the complainant, Abbaji, has sustained contused lacerated wounds on the left side of the forehead in the nature of sharp-cutting edge. The certificates of the three injured witnesses prima facie support the version of the complainant as stated in the first information report, and the statements of other witnesses recorded during investigation.

During the course of hearing of this application, the learned counsel for the petitioner has invited my attention to several first information reports filed against respondent No.2, Dhanjibhai Sujaji, who is the President of Vav Taluka Panchayat. Learned APP has produced a statement showing that several criminal cases have been filed against respondent No.2, Dhanjibhai Sujaji, and Ambaji Sujaji. The said statement is ordered to be taken on record. This statement shows that several criminal cases were filed against respondent No.2 and his associates. Having regard to the facts and circumstances of the case, in my view, the learned Additional Sessions Judge, without referring to these facts on record, has passed the order releasing respondents Nos. 2,3 and 4 on anticipatory bail.

First information report was lodged by the complainant on June 16,1998 at 12.30 hrs and the application for anticipatory bail came to be filed by all the five accused persons on July 9, 1998, i.e, after lapse of 25 days of lodging of first information report. From the police papers, it becomes evident that the accused persons were absconding and could not be arrested by the Investigating Officer. The forms of warrant of arrest were also issued under Section 70 of the Code, but the accused persons including respondents Nos. 2, 3 and 4 could not be arrested. Therefore, the learned Additional Sessions Judge ought not to have exercised his discretion in favour of respondents Nos. 2, 3 and 4 for grant of anticipatory bail more particularly when they were avoiding arrest and, in fact, were absconding.

Mr. Vivek Barot, learned counsel for the respondents Nos. 2, 3 and 4, has submitted that, at the time of incident, respondent No.2, Dhanjibhai Sujaji, was not present at the place of incident as he was accompanying the Minister. It is submitted that a telephone message was sent to Tharad Police Station that respondent No.2 was accompanying the said Minister on the date of the incident. In other words, respondent No.2 has raised a plea of alibi. In my opinion, when there is version of eye-witnesses, which shows that respondent No.2 has fired bullets from his gun, and looking to the injury certificates, it cannot be said, at this stage, that respondent No.2 was not present at the time of the incident. Entry of telephone message was recorded at Tharad Police Station on 16.6.1998 at 11.25 hrs. The Investigating Agency has yet to make investigation with regard to plea of alibi of respondent No.2. Therefore, at this stage, it cannot be said that respondent No.2 has established his plea of alibi.

The question which arises for consideration of this Court is whether the anticipatory bail, which is granted to the respondents Nos. 2, 3 and 4, requires to be cancelled under Section 439(2) of the Code.

The learned counsel for the petitioner has vehemently submitted that this is a fit case wherein the anticipatory bail deserves to be cancelled.

On the other hand, it is submitted by the learned counsel for the respondents Nos. 2, 3 and 4 that a bail can be cancelled in rarest of rare cases where the person released on bail abuses liberty or commits any breach of conditions imposed while releasing him on bail. In support of his submission, the learned counsel for the respondents Nos. 2, 3 and 4 has relied upon the following judgments:

- (i) (1992) 4 SCC 271 (Aslam Babalal Desai vs. State of Maharashtra) = AIR 1993 SC 1
- (ii) (1995) 1 SCC 349 (Dolatram & Others vs. State of Haryana)

It is settled principle of law propounded by the Apex Court in a catena of judgments that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to. The bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. It is only in rarest of rare case the bail granted can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. (See: (1) Aslam Aslam Babalal Desai vs. State of Maharashtra, reported in AIR 1993 Supreme Court 1, (2) Dolatram vs. State of Haryana, reported in 1995 Supreme Court Cases (Cri) 237)

The evidence collected by the Investigating Agency during the course of investigation and allegations made in the first information report, prima facie, show that respondents Nos. 2, 3 and 4 are involved in serious offences and were found to have been absconding and avoiding their arrest. Under the circumstances, in my view, the learned Additional Sessions Judge ought not to have exercised his discretion in releasing respondents Nos. 2, 3 and 4 on anticipatory bail. But, in view the principles laid down by the Supreme Court in the cases of Aslam Babalal Desai and Dolatram (supra), once respondents Nos. 2, 3 and 4 are released on anticipatory bail, the same cannot be cancelled particularly when the application of respondent Nos. 2, 3 and 4 for regular bail is to be heard by the Sessions Court, Banaskantha, at Palanpur, within a short period.

As a result of foregoing reasons, the application is rejected. The interim order dated July 22, 1998 stands vacated. Rule is discharged. The office is directed to send the writ of this order to the Sessions Court, Banaskantha, at Palanpur, forthwith.

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